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JAN 19 2006

**OFFICE OF PETITIONS**

In re Application of :  
Lance M. Middleton :  
Application No. 10/672,327 :  
Filed: September 26, 2003 :  
Attorney Docket No. SPINE 3.0-2144 :  
DIV II :  
ON PETITION

This is a decision on the paper titled "REQUEST FOR REINSTATEMENT", filed September 16, 2005, which is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment of the above identified application.

The petition is GRANTED.

This application was held abandoned for failure to timely reply to the final Office action mailed October 13, 2004. This Office action set a shortened statutory period for reply of three (3) months. On December 23, 2004, applicant filed an amendment. However, by Advisory Action mailed January 19, 2005, applicant was advised that the amendment did not place the application in condition for allowance. No further reply with an extension of time having been received, the application became abandoned on January 14, 2005. A Notice of Abandonment was mailed on August 23, 2005.

Petitioner contends that he did timely file a proper response, namely an RCE with a one month extension of time, on January 14, 2005. In support, petitioner has included a copy of a properly itemized postcard receipt, showing that a "Request for Continued Examination Transmittal (1 page)" and a "Petition for Extension of Time (1 month)" were filed on January 18, 2005.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503.

In view thereof, **THE HOLDING OF ABANDONMENT IS WITHDRAWN**.

Given the basis for granting this petition, no petition fee was required and none has been charged.

Receipt of the \$790 RCE fee on January 18, 2005 is acknowledged. However, as the fee for the one month extension of time was never charged, the \$120 fee has now been charged to Deposit Account No. 12-1095.

The matter is being forwarded to Group Art Unit 3738 for consideration of the RCE filed January 18, 2005 (copy supplied on petition filed September 16, 2005).

Telephone inquiries regarding this decision should be directed to the undersigned at (571)272-3207.

*Cliff Congo*

Cliff Congo  
Petitions Attorney  
Office of Petitions